IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

Crl.MC.No. 523 of 2007()

MP.453/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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PETITIONER: ACCUSED

V.THULASI DAS, S/O.KUTTIKRISHNAN NAIR,
RETD.PETTY OFFICER, NO.164848 F, INDIAN NAVY,
AIRCRAFT WING, INS GARUDA, NAVAL BASE,
KOCHI.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
(C.C.1191/01 OF JFMC-II,KOCHI)

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.523 of 2007

Dated this the 13th day of March 2007

O R D E R

The petitioner is the accused in a prosecution under Section 498(A) I.P.C. The crux of the allegation is that the petitioner was guilty of mental and physical cruelty of the culpable variety, against his wife who ultimately committed suicide by hanging herself on 26/08/2000. Death occurred at the hospital on 29/08/2000. An F.I.R was lodged by the brother-in-law of the deceased. Investigation was conducted. Final report was filed by the investigator and cognizance was taken by the learned Magistrate.

2. Trial commenced. The prosecution evidently did not conduct its case properly. Necessary witnesses were not examined. Consequent to the inability of the prosecution to procure witnesses, the learned Magistrate ordered that the evidence be closed and posted the matter for 313 examination. At that stage, the learned Magistrate realised that, in the facts and circumstances of this case, more serious efforts must be made to procure the presence of the witnesses. Accordingly,

there was an attempt to procure the presence of the witnesses. Two of such witnesses were examined at that stage. The petitioner filed an application complaining that the copy of the inquest report has not been furnished to the petitioner. By Annexure A1 order, the request for copy has turned down. The petitioner has, in these circumstances, come to this court raising the grievance that he apprehends that justice may not be done to him at the hands of the learned Magistrate. There is a prayer for transfer of the case. There is also a prayer to set aside Annexure A1 order.

3. I have heard the learned counsel for the petitioner, in detail. I had called for a report from the learned Magistrate. The report of the learned Magistrate has been received. I have perused the same.

4. I am unable to find any such conduct on the part of the learned Magistrate which can justify the present prayer for transfer of the case. It is true that the learned Magistrate closed the proceedings once and posted the same for 313 examination. But on perusal of the records, the learned Magistrate appears to have realised that the case cannot be permitted to be closed

merely because the prosecution has not taken earnest effort to procure the presence of the petitioner. This cannot be reckoned as conduct on the part of the Magistrate which would justify an apprehension of prejudice on the part of the accused. The learned Magistrate is not a mere umpire. He is also interested in the due administration of justice. Where the court is satisfied that all the necessary witnesses have not been examined and that proceedings have been closed because of the prosecution did not show sufficient interest, nothing can restrain the court from directing that the witnesses who have been cited and have not been examined must be examined before court. In doing that, the learned Magistrate did not commit any indiscretion which would justify entertaining of an apprehension that justice may not be done to the petitioner at the hands of the learned Magistrate. The prayer for transfer is misconceived and is not justified. It deserves to be rejected.

5. The learned counsel for the petitioner submits that Annexure A1 order is not justified. Inquest report was relied on by the prosecution. It is the case of the petitioner now that he has not been given coy of the inquest report. The petitioner

must have known that the prosecution is relying on the inquest report. The original inquest report was available in court also. I shall assume for the sake of arguments that the copy has not been furnished to the petitioner. I must note that the witnesses were being recalled and the petitioner may have been under the impression that the relevant witness will not be examined and had hence not insisted on furnishing of the copies. The learned Magistrate must in these circumstances have considered that request fairly and by way of abundant caution to avoid any unnecessary grievance must have ensured that the copy of the inquest report was furnished to the petitioner. I direct that such copy shall be furnished to the petitioner by the learned Magistrate, expeditiously. After getting such copy, the petitioner, if necessary, can make an application for recall of the witnesses already examined and the learned Magistrate must consider such request, on merits and pass appropriate orders.

This Criminal Miscellaneous Case is, in these circumstances, allowed in part - to the above limited extent.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006